IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 151 of 2006
WITH
CIVIL APPLICATION NO.12450 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANTHALI MUNICIPAL BOROUGH - Appellant(s)
Versus
HABIBSHA HASANSHA GUHRAVARDHY & 1 - Defendant(s)

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Appearance :
MR NILESH M SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/02/2007

ORAL JUDGMENT

1. Heard Mr.N.M. Shah, learned counsel for the appellant on the question of admission.

2. The present respondents filed Civil Suit in a

representative capacity challenging the action of the administrator of the defendant Municipal Borough to enhance the House Tax from 8% to 20%, by Resolution No.47 dtd.31/1/1995 on the ground that the resolution was passed without following due process of law. It is to be noted that the very same matter was placed before the Collector, who had observed that the resolution passed by the Municipality was bad. He, however, ordered the Municipality that they would be entitled to pass a new resolution after observing the procedure as provided under the law. By his order, the Collector, in fact, had set aside the resolution dtd.31/1/1995. It appears that all these took place during the pendency of the suit. The learned trial court dismissed the suit but the learned appellate court held that the resolution dtd.31/1/1995 was bad.

3. Mr.Shah, learned counsel for the appellant Municipality submits that during the pendency of the suit, Resolution dtd.31/1/1995 was set aside by the Collector with liberty in favour of the Municipality to pass yet another resolution in accordance with law. He submits that after the orders were passed by the Collector, the Municipality followed the entire procedure and had passed some other

resolution in 1996 with a clear stipulation that the said resolution would be effective w.e.f. 31/1/1995. Mr.Shah submits that in view of the changed circumstances, learned appellate court was not required to interfere in the matter.

4. Once it is held that the resolution dtd.31/1/1995 was bad and the Collector was competent to set it aside, then the Civil Court certainly would have jurisdiction to hold that such a resolution was bad. The Civil Court would have jurisdiction to interfere with the work / resolutions etc. of autonomous body, if it finds that the said body was violating the provisions of law, it was not following the law and was violating the principles of natural justice.
5. In the present case, from the appellant's own showing, it would clearly appear that the resolution dtd.31/1/1995 was bad and it was set aside by the Collector.
6. So far as the retrospective effect of 1996 resolution is concerned, in the opinion of this Court, the Municipality was not entitled to make the resolution effective from some earlier date.
7. It is trite to say that unless the law authorises an authority to recover the tax from retrospective date, such authority would not be entitled to recover the tax from

retrospective date. However, the plaintiff's challenge was only to the resolution dtd.31/1/1995. On the appellant's own showing, it would clearly appear that the said resolution was bad and even the Collector had interfered in the matter.

8. I find no reason to interfere in the matter. The appeal deserves to and is accordingly dismissed. Consequently, Civil Application No.12450 of 2006 is also dismissed.

(R.S. GARG, J.)

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